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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL SEAN O'GRADY,

Defendant and Appellant.

G054159

(Super. Ct. No. 13HF1740)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheri Pham, Judge. Affirmed.

Shawn E. Fields, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Defendant Daniel Sean O'Grady pleaded guilty to felony possession of methamphetamine for sale (Health & Saf. Code, § 11378; count 1), misdemeanor possession of controlled substance paraphernalia (former Health & Saf. Code, § 11364.1, subdivision (a), now Health & Saf. Code § 11364, subd. (a); count 2), and misdemeanor possession of a designated controlled substance (Health & Saf. Code, § 11375, subd. (b)(2); count 3). Defendant also admitted three prior convictions for violations of Health & Safety Code section 11378, and one prior conviction for violation of Health & Safety Code section 11379, subdivision (a), resulting in true findings on enhancement allegations under Health & Safety Code section 11370.2, subdivision (c), and three prison prior enhancements under Penal Code section 667.5, subdivision (b).

The court suspended imposition of sentence on counts 2 and 3, and struck for sentencing purposes all but one of the enhancements under Health & Safety Code section 11370.2, subdivision (c), and all of the prison prior enhancements. The court sentenced defendant to a total of five years, comprised of three years of incarceration in the county jail followed by two years of mandatory supervision.

Defendant filed a notice of appeal from the earlier denial of his motion to suppress evidence under Penal Code section 1538.5, and we appointed counsel to represent him. Counsel did not argue against defendant, but advised the court he was unable to find an issue to argue on defendant's behalf. Defendant was given the opportunity to file written argument on his own behalf, but he has not done so,

We have examined the entire record but have not found an arguable issue (*People v. Wende* (1979) 23 Cal.3d 436.) Accordingly, we affirm the judgment.

FACTS

We recite the facts in the light most favorable to the judgment, limited to the facts presented at the hearing on defendant's motion to suppress evidence. (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.)

About 9:30 one night, Deputy Sheriffs Jeffrey Jensen and Marco Munguia were checking on a reported burglary alarm at a business in San Clemente, California. While checking the building, they looked down an embankment to a cul de sac below and noticed an Isuzu Trooper with its hood up "like it was in distress." They observed a woman getting out of the vehicle and standing near it. After checking the perimeter of the building for signs of a burglary and finding nothing, the officers drove down to the cul de sac to check on the woman's welfare. When the officers arrived at the cul de sac they saw two vehicles; the Isuzu Trooper "with its hood down at this point," and a white Toyota Corolla four door sedan parked behind the Trooper. The Toyota was parked several feet away from the curb.

The officers illuminated both vehicles with their spotlights; Jensen approached the female in the Isuzu and Munguia approached defendant who was sitting in the Toyota. Jensen explained why they approached the individuals: "It's late at night. It's almost 10:00 at night. There's no businesses [on that street] whatsoever. . . . The vehicle was as far as I knew disabled and I wanted to make sure that we were going to do a welfare check and make sure she was okay, the female. [¶] The vehicle was parked — the Toyota Corolla was parked several feet from the curb, which is a violation. And then I wanted to investigate at that point and see. There was a white car. We've had burglaries involving a white vehicle in the area. I wanted to determine if this subject was, in fact, related to those burglaries, and if he wasn't then that's fine, but if he was then we were going to investigate more."

The female in the Isuzu told Jensen that she “had car trouble while driving from Seal Beach to her home in Lake Elsinore, and she had trouble with her battery of her vehicle and she stopped there to fix it.” Jensen became suspicious because the Isuzu was two miles from the freeway and not on a normal route one would use to travel from Seal Beach to Lake Elsinore. Jensen asked the female to step out of the vehicle and had her sit on the bumper of the patrol vehicle.

Jensen then approached defendant who was sitting in the Toyota. Jensen illuminated the inside of the vehicle with his flashlight and immediately saw a red prescription container on the passenger seat and smelled the odor of burnt marijuana coming from the vehicle’s open window. Based on Jensen’s training and experience, he believed the red container was the type that usually contained marijuana. Jensen asked defendant to step out of the vehicle. Defendant initially refused to get out of the car, but he did comply after Jensen opened the driver’s side door, stepped into the doorway, and told defendant to get out. Jensen asked defendant whether he had a medical marijuana card, and defendant produced from his wallet a form that “looked official,” but Jensen did not know what the form should look like. Jensen then returned to the Toyota and illuminated the inside with his flashlight. Jensen saw a glass pipe that had residue on it that was consistent with a methamphetamine smoking pipe. The pipe was in an open zipper pocket in a backback on the front passenger seat of the Toyota.

Jensen conducted a search of both defendant and the Toyota. On defendant’s person Jensen found approximately six grams of methamphetamine in three different packages, \$715 in cash, and a cell phone. In the Toyota Jensen found pills that were later determined to be Lorazepam. Jensen arrested defendant.

DISCUSSION

Defendant appeals from the court's denial of his motion to suppress the evidence discovered in the search of his person and vehicle under Penal Code section 1538.5. We have reviewed the entire record and, like appointed counsel, we are unable to find an arguable issue on appeal.

The court found that the initial encounter with defendant was consensual and we agree. "[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place" (*Florida v. Royer* (1983) 460 U.S. 491, 497.) The court also found that "almost immediately" Jensen "observed in plain view on the passenger seat [of defendant's vehicle] a prescription bottle containing marijuana," and that observation, by itself, gave Jensen probable cause to arrest defendant for possession of marijuana. At a minimum, the suspicious story of the female in the Isuzu, the observation of the prescription bottle in defendant's car, the smell of burnt marijuana, the knowledge that recent burglaries in the immediate area involved a white vehicle like defendant's, and the fact that defendant's vehicle was parked illegally, were specific articulable facts giving rise to a reasonable suspicion that criminal activity was afoot, thereby justifying a temporary detention. (*Terry v. Ohio* (1968) 392 U.S. 1, 30.) The subsequent discovery of the methamphetamine pipe provided probable cause to arrest defendant and to conduct a further search incident to the arrest. "One of the specifically established exceptions to the Fourth Amendment's warrant requirement is 'a search incident to a lawful arrest.'" (*People v. Diaz* (2011) 51 Cal.4th 84, 90.)

Accordingly, the motion to suppress evidence was correctly denied. Our review of the record has not revealed an arguable issue on appeal.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.